

## Message Text

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14

ORIGIN NEA-12

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DRAFTED BY L/NEA:ATBROWN:NEA/ARP:QGLUMSDEN,JR:BGG

APPROVED BY NEA/ARP:FMDICKMAN

DOD/OSD(GC):SHERO

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R 142205Z DEC 73

FM SECSTATE WASHDC

TO AMEMBASSY MANAMA

INFO AMEMBASSY KUWAIT

SECDEF

CNO

CINCEUR

CINCUSNAVEUR

NAVY JAG

COMIDEASTFOR

C O N F I D E N T I A L STATE 244939

E.O.: 11652: GDS

TAGS: MARR PFOR BA

SUBJ: CRIMINAL JURISDICTION OVER U.S. NAVAL PERSONNEL

REF: (A) MANAMA 0599 (B) STATE 155717 (C) STATE 153862

(D) MANAMA 0732 (E) MANAMA 0291

1. THE PROPOSED NOTE ESTABLISHING STANDARDS FOR THE EXERCISE OF CRIMINAL JURISDICTION OVER MEMBERS OF U.S. FORCES (REF A, PARA 1) IS GENERALLY ACCEPTABLE BUT REQUIRES SOME MODIFICATION AS FOLLOWS:

2. IN ACCORDANCE CHARGE STEIN'S RECOMMENDATION TO ARP, AMEND FIRST SENTENCE OF NOTE TO READ QUOTE I HAVE THE HONOR TO REFER TO THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND BAHRAIN SIGNED AT MANAMA DECEMBER 23, 1971, CONCERNING THE UNITED STATES MIDDLE EAST FORCE. UNQUOTE.  
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3. RE COMMENTS OF MINISTER (REF A, PARAGRAPH 2.A) AND OF EMB/COMIDEASTFOR (REF A, PARAGRAPH 3.A): THE PHRASE QUOTE POLITICALLY -SENSITIVE CRIMES UNQUOTE WAS CAREFULLY CONSIDERED HERE BEFORE INCLUSION IN INSTRUCTIONS CONTAINED REF C, PARAGRAPH 2, AND WE DO NOT BELIEVE IT DESIRABLE, ESPECIALLY IN LIGHT OF PRESENT CIRCUMSTANCES, TO INTRODUCE LIMITING LANGUAGE IN THE NOTE. HOWEVER, GOB SHOULD BE ADVISED THAT USG CONSIDERS THAT THE CRIMES MUST BE OF MAJOR POLITICAL SENSITIVITY TO THE GOB. WHILE THE PHRASE COULD BE INTERPRETED MORE BROADLY BY THE GOB THAN BY THE USG, WE HAVE RETAINED DISCRETION IN CONNECTION WITH ITS USE, AGREEING ONLY TO QUOTE ADOPT A LIBERAL WAIVER POLICY IN KEEPING WITH THE INTENT OF THE LAST SENTENCE OF PARAGRAPH 11 OF THE STATIONING AGREEMENT UNQUOTE. ACCORDINGLY, WE HAVE NO OBJECTION TO STATING THAT GENERAL PRINCIPLE BEFORE THE MORE SPECIFIC COMMITMENT IN CONNECTION WITH THE FOUR ENUMERATED TYPES OF CASES SET FORTH IN PARAGRAPH 1.B OF REF A. YOU SHOULD ORALLY POINT OUT TO MINISTER THAT THIS STATEMENT OF GENERAL PRINCIPLE CONSTITUTES IMPLICIT CONFIRMATION THAT A POLITICALLY SENSITIVE CRIME COULD, UNDER CERTAIN CIRCUMSTANCES, BE OTHER THAN JUST THOSE LISTED IN PARAGRAPH 1.B OF REF A. HOWEVER YOU SHOULD EMPHASIZE THAT THE PROVISION FOR WAIVER OF POLITICALLY SENSITIVE CRIMES SHOULD NOT BE CONSTRUED AS A DEPARTURE FROM THE PROPOSITIONS, ALSO APPLICABLE TO PARA 1.B CRIMES, THAT WAIVERS WILL NOT BE GRANTED WHEN THE VICTIM IS A MEMBER OF THE FORCE OR WHEN THE OFFENSE ARISES FROM THE PERFORMANCE OF DUTY.

4. REF A, PARAGRAPH 1.B: LISTING OF OFFENSES HAS CHANGED QUOTE TRAFFICKING IN DRUGS UNQUOTE TO QUOTE DRUG OFFENSES UNQUOTE. DRUG USE AND POSSESSION OF SMALL QUANTITIES OF DRUGS FOR PERSONAL USE ARE NOT OFFENSES OVER WHICH THE NAVY WILL WAIVE JURISDICTION ROUTINELY UPON REQUEST AND CERTIFICATION. DRUG SALE FOR PROFIT, INCLUDING POSSESSION OF LARGE QUANTITIES OF DRUGS FOR THE PURPOSE OF SALE, IS CONSIDERED TO BE THE DRUG RELATED OFFENSE OF MOST CONCERN TO GOB AS IT IS TO MOST COUNTRIES. THIS IS WHAT WAS CONTEMPLATED IN THE REF C LANGUAGE QUOTE TRAFFICKING UNQUOTE IN DRUGS. ACCORDINGLY, CONFIDENTIAL

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PARAGRAPH 1.B SHOULD BE AMENDED TO INSERT QUOTE TRAFFICKING IN DRUGS UNQUOTE IN PLACE OF QUOTE DRUG OFFENSES UNQUOTE.

5. REF A, PARAGRAPH 1.B: QUOTE SERIOUS INJURY CASES UNQUOTE CATEGORIZATION IS CONSIDERED TOO VAGUE. FORMULATION ALONG LINES OF QUOTE SERIOUS INJURY CASES IN WHICH SIGNIFICANT PERMANENT DISABILITY IS PROBABLE UNQUOTE WOULD BE ACCEPTABLE TO NAVY AND SOLVE MINISTER'S

CONCERN OVER TIME THAT MIGHT ELAPSE BEFORE CONCLUSIVE DETERMINATION OF PERMANENT DISABILITY COULD BE MADE.

6. REF A, PARA 1.C HAS INSERTED QUOTE REASONABLE TIME UNQUOTE CRITERION FOR SUBMISSION OF WAIVER REQUESTS BY GOB. REF A, PARA 1.F SAYS WAIVER REQUESTS SHOULD BE QUOTE TIMELY UNQUOTE. WE AGREE WITH EMB/COMIDEASTFOR THAT SPECIFIC TIME FRAME FOR SUBMISSION IS DESIRED. WE INTERPRET BOTH QUOTE REASONABLE TIME UNQUOTE AND QUOTE TIMELY UNQUOTE TO MEAN WITHIN 14 DAYS. HOWEVER, IN REF A, PARAS 1.C AND 1.F, NAVY IS PREPARED TO EXTEND FOURTEEN DAY TIME FRAME AN ADDITIONAL FOURTEEN DAYS IN SPECIFIC CASES UPON RECEIPT OF REQUEST FROM APPROPRIATE GOB AUTHORITIES WITHIN THE INITIAL 14 DAYS. RESPONSE TO REQUESTS FOR FURTHER DELAY WOULD DEPEND ON CIRCUMSTANCES. YOUR NOTE TO GOB AUTHORITIES SHOULD EXPLICITLY STATE OUR UNDERSTANDING OF BOTH THE LENGTH OF THE INITIAL AND SECONDARY TIME PERIODS (VIZ: 14 DAYS EACH) AND THE TERMS OF OUR WILLINGNESS TO EXTEND THEM, BUT IT SHOULD ALSO ADVISE GOB AUTHORITIES CLEARLY OF NAVY'S OBLIGATION TO ACCORD ACCUSED SPEEDY TRIAL OR RISK POSSIBLE DISMISSAL OF CHARGES.

7. REF A, PARAGRAPH 1.C REFERS TO A REQUEST FOR WAIVER WITHOUT SPECIFYING FORM OF REQUEST. THE REQUEST MUST RPT MUST BE CERTIFIED, I.E. IN WRITING. THIS REQUIREMENT SHOULD BE INSERTED IN THE SUBPARAGRAPH.

8. REGARDING LEGAL ADVISER'S COMMENT (REF A, PARA 2.D) THAT WE SHOULD NOT EXPECT TO RECEIVE WRITTEN CERTIFICATION SIGNED AT HIGH LEVEL, WE FEEL THAT THE VERY TERMS OF THE CERTIFICATION, I.E. THAT THE CASE IS OF PARTICULAR IMPORTANCE TO THE GOB, REQUIRES A DETERMINATION BY A HIGH CONFIDENTIAL

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GOVERNMENT OFFICIAL. THE DIRECTOR GENERAL OF POLICE OR HIGHER LEVEL OFFICIAL (REF A, PARA 3.D) WOULD BE APPROPRIATE FOR THIS PURPOSE IN OUR VIEW.

9. WE DO NOT UNDERSTAND MINISTER'S POINT REPORTED REF A, PARA 2.E. A SPECIFIC REFERENCE TO PARA 11 OF THE AGREEMENT IS NECESSARY TO ESTABLISH THAT WE DO NOT MEAN IN THIS NOTE OF UNDERSTANDINGS TO SUGGEST A GENERAL WAIVER OF OUR PARA 11 RIGHTS IN TIME OF MARTIAL LAW OR NATIONAL EMERGENCY.

10. IF YOU HAVE ANY PROBLEMS WITH ABOVE MODIFICATIONS, PLEASE CABLE DEPARTMENT. OTHERWISE YOU ARE INSTRUCTED TO SEND NOTE BASED UPON REF (A) PARA 1, AS MODIFIED ABOVE, TO GOB.

11. WE WOULD ALSO APPRECIATE YOUR COMMENTS ON CURRENT  
ADVISABILITY OF RESPONDING -- OR NOT RPT NOT RESPONDING --  
DIRECTLY TO FOREIGN MINISTER'S MAY 15, 1973 LETTER (REF E)  
REGARDING JURISDICTION IN PO2 MASTER CASE.

12. DOD CONCURS.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** MILITARY PERSONNEL, NAVAL FORCES, CRIMINAL LAW, MILITARY JUSTICE  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 14 DEC 1973  
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**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** golinofr  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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**TAGS:** MARR, PFOR, BA  
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**Type:** TE  
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